

Remarks

Claims 1, 3-5, 14-21, and 23-26 are currently pending. No amendments are made with this Response.

The following remarks are in response to the Final Office Action mailed November 9, 2010.

Claim Rejections – 35 U.S.C. § 103

Claims 1, 3-5, 14-21, and 23-26 stand rejected under 35 U.S.C. § 103 as unpatentable over Cushing (U.S. Pat. No. 7,162,447) in view of Huttenlocher (U.S. Pat. App. Pub. No. 2003/0093343) and in further view of Madden (“Structural Changes in Trading Stocks,” J. Portfolio Management, Fall 1993) and Cleary (WO 02/097589). These rejections are respectfully traversed, for at least the reasons provided below.

First, Applicant respectfully submits that none of the references teaches or suggests the claim 1 limitation of “executing with a second processor a trade comprising said first order and said second order at a trade execution price different from said reference price, wherein said trade execution price complies with said first price limit and said second price limit, and wherein said trade execution price is calculated to minimize a difference between said reference price and said trade execution price.”

As best understood, the Office Action asserts that (a) Huttenlocher teaches an execution price equal to a reference price, and therefore teaches minimizing the difference between the reference price and the execution price, and (b) Cleary teaches an execution price different from a reference price. The Patent Office then concludes that the combination of Huttenlocher and Cleary results in the above-quoted limitation from claim 1.

Applicant respectfully disagrees. In Huttenlocher, there is no difference between the execution price and the reference price. Consequently, there is nothing

to minimize, and combining Huttenlocher with Cleary fails to teach or suggest minimizing the difference between the execution price and the reference price.

The Office Action's asserted motivation to combine Cleary with Cushing (i.e., not with Huttenlocher) is "for the motivation of providing the best execution while respecting customer limits." This sort of conclusory assertion does not satisfy the *KSR* requirements for establishing a prime facie case of obviousness.

The *KSR* test states that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." See MPEP 2143.01(IV).

Also see MPEP 2143: "the key to supporting any rejection under 35USC § 103 is the clear articulation of the reasons the invention would have been obvious." In other words, the asserted motivation to combine must be logical and reasonable, and clearly explained (i.e., not conclusory).

In this case, Applicant respectfully submits that the asserted rationale for combining Cleary with Cushing is merely conclusory. The assertion is equivalent to merely saying that the combination would somehow be "better." This is not the sort of "articulated reasoning with some rational underpinning" required by *KSR* and MPEP 2143.

Also, of course, a motivation to combine Cleary with Cushing, would not motivate one to combine Cleary with Huttenlocher, and the latter combination seems to be what the Office Action relies upon to manufacture its rejection of claim 1.

Another claim 1 limitation not taught by the prior art is having a "buy order that . . . comprises a . . . price limit that is less than said reference price."

The Office Action, as best understood, asserts that Cushing teaches this limitation at col. 7, lines 1-20, but that section of Cushing does not discuss limit order prices. All orders mentioned therein are either for a fixed price, or are "unpriced." While, according to Cushing, it is possible for an unpriced order to have a maximum

or minimum execution price (see Cushing, col. 5, lines 7-12), Cushing does not mention any specific price limits (presumably because they don't "influence the price discovery algorithm") and therefore does not teach a buy order with a price limit that is less than a reference price.

Thus, none of the cited references discloses: (1) executing two limit orders at an execution price different from a reference price, with that difference being minimized; or (2) crossing a buy limit order with a sell limit order, where either the buy limit price is below the reference price or the sell limit price is above reference price. Since at least these limitations (which are present in one form or another in each of the pending independent claims) are missing from all of the cited references, Applicant respectfully submits that all of the pending claims (1, 3-5, 14-21, and 23-26) are allowable over the prior art of record. Accordingly, reconsideration and allowance of these claims are respectfully requested.

No fee is believed due in connection with this Reply, other than the requisite extension of time and RCE fees. If any other fee is due, please charge that fee to Cowan, Liebowitz & Latman's Deposit Account No. 03-3415.

Respectfully submitted,

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